



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Part 201**

**[Docket No. 2017-7]**

#### **Modernizing Copyright Recordation**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Supplemental interim rule.

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**SUMMARY:** The United States Copyright Office is issuing a supplemental interim rule amending its regulations governing recordation of transfers of copyright ownership, notices of termination, and other documents pertaining to a copyright. This rule supplements the Office's current interim recordation regulations in anticipation of the Office's forthcoming pilot program through which participating remitters will be able to record certain types of documents electronically online. The supplemental interim rule and pilot program are the next step in the recordation modernization process, which will lead to a full public release of the Office's electronic recordation system in the future.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at [regans@copyright.gov](mailto:regans@copyright.gov), or Jason E. Sloan, Assistant General Counsel, by email at [jslo@copyright.gov](mailto:jslo@copyright.gov). Each can be contacted by telephone by calling (202) 707-8350.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Under the Copyright Act of 1976, the U.S. Copyright Office is responsible for recording documents pertaining to works under copyright, such as assignments, licenses, and grants of security interests.<sup>1</sup> The Office is also responsible for recording notices of termination.<sup>2</sup> As discussed in a notice of proposed rulemaking published in the Federal Register on May 18, 2017 (“NPRM”),<sup>3</sup> the current recordation process is a time-consuming and labor-intensive paper-based one, requiring remitters to submit their documents in hard copy.

As previously detailed, the Office is engaged in an effort to modernize the recordation process by developing a fully electronic, online system through which remitters will be able to submit their documents and all applicable indexing information to the Office for recordation. In conjunction with the anticipated development effort, the Office issued the NPRM to propose updates to the Office’s regulations to govern the submission of documents to the Office for recordation once the new electronic system is developed and launched. The NPRM explained that while the Office could not estimate when the new system would be completed, public comments were being sought because the Office needed to make a number of policy decisions critical to the design of the to-be-developed system.<sup>4</sup>

In addition, the NPRM further stated that while the proposed amendments were designed with a new electronic submission system in mind, at least some of the proposed

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<sup>1</sup> 17 U.S.C. 205.

<sup>2</sup> A “notice of termination” is a notice that terminates a grant to a third party of a copyright in a work or any rights under a copyright. Only certain grants may be terminated, and only in certain circumstances. Termination is governed by three separate provisions of the Copyright Act, with the relevant one depending on a number of factors, including when the grant was made, who executed it, and when copyright was originally secured for the work. *See* 17 U.S.C. 203, 304(c), 304(d).

<sup>3</sup> 82 FR 22771 (May 18, 2017).

<sup>4</sup> *Id.* at 22771.

changes could be implemented sooner, without the new system. Thus, the Office noted that, to the extent possible under the Office’s current paper system, the Office intended to adopt some aspects of the proposed rule on an interim basis until such time as the electronic system is complete and a final rule is enacted.<sup>5</sup> The Office adopted such regulations pursuant to an interim rule published in the Federal Register on November 13, 2017.<sup>6</sup> For details about the changes made by that interim rule, please consult the Federal Register notice.

## **II. Pilot Program**

Since adoption of the interim regulations in late 2017, the Office, through the Library of Congress’s Office of the Chief Information Officer, has been engaged in development efforts to build the electronic recordation system discussed in the NPRM. The first iteration of that system is nearing completion and is planned to be released on a limited basis through a pilot program, which the Office will initiate through a separate announcement. The pilot release will be made available to certain remitters (“pilot remitters”) intended to be a representative sample of the spectrum of those who submit documents for recordation. At launch, it is planned that these pilot remitters will be able to electronically submit to the Office for recordation most types of transfers of copyright ownership and other documents pertaining to a copyright under 17 U.S.C. 205. Notices of termination, however, will not be part of the pilot program when initially launched. System development will be ongoing throughout the pilot, and will eventually lead to a full public release of the Office’s electronic recordation system. Some features may be

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<sup>5</sup> *Id.* at 22771–72.

<sup>6</sup> 82 FR 52213 (Nov. 13, 2017).

released into the pilot as they are developed, while others may be held for or may not be ready until the full public release. Starting with a limited pilot release will help the Office to work with users to address feedback while development continues.

### **III. Supplemental Interim Rule**

The Office is issuing a supplemental interim rule to establish the regulatory groundwork for the pilot, in advance of its commencement. The supplemental interim rule makes no changes to the Office's recordation rules for submissions made outside of the pilot program. For pilot program submissions, the supplemental interim rule makes electronic submissions permissible and provides that such submissions are to be made in accordance with special pilot program rules that the Office will separately establish and issue to pilot remitters. This will allow the Office the flexibility to be able to update and modify relevant pilot rules, procedures, and instructions as quickly as needed, without resorting to further rulemaking.<sup>7</sup> This flexibility is necessary because development will be ongoing throughout the pilot and the Office may need to address unanticipated issues that may arise. For the same reasons, the supplemental interim rule also specifies that the special pilot program rules will supersede any conflicting regulation, rule, instruction, or guidance.

The rule includes two other provisions specific to pilot remitters. First, the supplemental interim rule makes clear that participation in the pilot is optional and pilot remitters may continue to submit documents for recordation in paper form. Second, the

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<sup>7</sup> For similar reasons, the Office previously adopted such an approach to its instructions for preparing and submitting electronic title lists that may be included with paper recordation submissions. *See* 37 CFR § 201.4(e)(3)(i) ("The electronic list must be prepared and submitted to the Office in the manner specified by the Copyright Office in instructions made available on its Web site."); 82 FR at 52214 ("This change will allow the Office to develop more flexible instructions for remitters that can be updated and modified as needed without resorting to a rulemaking.").

rule provides that if there is any situation where the date of recordation for a submission cannot be established or, if established, would ordinarily be changed, the Office may, in its discretion, equitably assign a date of recordation if the problem is caused by an issue with the electronic system.

### **List of Subjects in 37 CFR Part 201**

Copyright, General provisions.

### **Interim Regulations**

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 201 as follows:

### **PART 201—GENERAL PROVISIONS**

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. Amend § 201.4 as follows:

- a. In the second sentence of paragraph (a), remove “A document” and add in its place “Except as otherwise provided pursuant to paragraph (h) of this section, a document”;
- and
- b. Add paragraph (h).

The addition reads as follows:

#### **§ 201.4 Recordation of transfers and other documents pertaining to copyright.**

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(h) *Pilot program for electronic submission.* The Copyright Office is implementing a limited pilot program through which certain types of documents may be electronically submitted for recordation online by certain remitters (“pilot remitters”).

This paragraph (h) shall govern such submissions to the extent they are permitted under the pilot program.

(1) *Electronic submission.* Pilot remitters may submit permitted types of documents for recordation using the Copyright Office's electronic system pursuant to this section and special pilot program rules provided to pilot remitters by the Office.

(2) *Participation.* No remitter may participate in the pilot program without the permission of the Copyright Office. Participation in the pilot program is optional and pilot remitters may continue to submit documents for recordation pursuant to paragraph (e) of this section.

(3) *Conflicting rules.* To the extent any special pilot program rule conflicts with this section or any other regulation, rule, instruction, or guidance issued by the Copyright Office, such pilot program rule shall govern submissions made pursuant to the pilot program.

(4) *Reliance on remitter-provided information.* Paragraph (f) of this section shall apply to all certifications and information provided to the Office through the electronic system.

(5) *Date of recordation.* In any situation where the date of recordation for a submission cannot be established or, if established, would ordinarily be changed, if due to an issue with the electronic system, the Office may assign an equitable date as the date of recordation.

3. Amend § 201.10 as follows:

a. In the first sentence of paragraph (f) introductory text, remove “A copy” and add in its place “Except as otherwise provided pursuant to paragraph (f)(6) of this section, a copy”; and

b. Add paragraph (f)(6).

The addition reads as follows:

**§ 201.10 Notices of termination of transfers and licenses.**

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(f) \* \* \*

(6) *Pilot program for electronic submission.* The Copyright Office is implementing a limited pilot program through which certain types of documents may be electronically submitted for recordation online by certain remitters (“pilot remitters”). This paragraph (f)(6) shall govern such submissions for notices of termination to the extent they are permitted under the pilot program.

(i) *Electronic submission.* Pilot remitters may submit permitted types of notices for recordation using the Copyright Office’s electronic system pursuant to this section and special pilot program rules provided to pilot remitters by the Office.

(ii) *Participation.* No remitter may participate in the pilot program without the permission of the Copyright Office. Participation in the pilot program is optional and pilot remitters may continue to submit notices for recordation pursuant to paragraph (f)(2) of this section.

(iii) *Conflicting rules.* To the extent any special pilot program rule conflicts with this section or any other regulation, rule, instruction, or guidance issued by the Copyright

Office, such pilot program rule shall govern submissions made pursuant to the pilot program.

(iv) *Reliance on remitter-provided information.* Paragraph (f)(5) of this section shall apply to all certifications and information provided to the Office through the electronic system.

(v) *Date of recordation.* In any situation where the date of recordation for a submission cannot be established or, if established, would ordinarily be changed, if due to an issue with the electronic system, the Office may assign an equitable date as the date of recordation.

**Dated:** January 14, 2020.

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**Maria Strong,**  
*Acting Register of Copyrights and  
Director of the U.S. Copyright Office.*

Approved by:

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**Carla D. Hayden,**  
*Librarian of Congress.*

**[BILLING CODE 1410-30-P]**

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